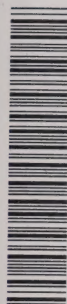


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Report of a Judicial Inquiry

Re: His Worship

Leonard P. Blackburn

A Justice of the Peace

The Honourable
Judge Mary L. Hogan
Commissioner



1994



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Re: His Worship
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The Honourable Judge
Mary Hogan
Commissioner
La juge Mary Hogan
Commissaire

Gavin MacKenzie
Counsel
Avocat-conseil

Commission of Inquiry Re:
His Worship
Leonard P. Blackburn
a Justice of the Peace

Commission d'enquête au sujet
du juge de paix
Leonard P. Blackburn

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TO HIS HONOUR THE LIEUTENANT GOVERNOR OF THE PROVINCE OF ONTARIO


May It Please Your Honour:

Pursuant to my appointment by Order in Council No. O.C.
2082/93 to make inquiry and report to the Lieutenant Governor in
Council into whether His Worship Leonard Blackburn, a Justice of
the Peace, should be removed from office, I hereby submit my report.

A handwritten signature in cursive script, reading 'Mary Hogan', written in black ink.

Commissioner

January 21, 1994



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COMMISSION OF INQUIRY INTO THE CONDUCT OF HIS WORSHIP LEONARD BLACKBURN, A JUSTICE OF THE PEACE

Introduction

The appointment and tenure of a Justice of the Peace in Ontario, is governed by the provisions of the *Justices of the Peace Act*, R.S.O. 1990, c.J.4. Section 8 of that Act is the section that deals with the removal of a Justice of the Peace from office. The section states as follows:

8. – (1) A justice of the peace may be removed from office only by order of the Lieutenant Governor in Council.
- (2) The order may be made only if,
 - (a) a complaint regarding the justice of the peace has been made to the Review Council; and
 - (b) the removal is recommended, following an inquiry held under section 12, on the ground that the justice of the peace has become incapacitated or disabled from the due execution of his or her office by reason of,
 - (i) infirmity
 - (ii) conduct that is incompatible with the execution of the duties of his or her office, or
 - (iii) having failed to perform the duties of his or her office assigned.
- (3) The order shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next session. 1989, c. 46, s.8

With regard to Justice of the Peace Blackburn, the Justice of the Peace Review Council held a hearing on March 2, 1993 into the matter of two complaints - one filed by Dana Bubic, and the other by Mr. George Thomson, Deputy Attorney General, on behalf of Malina Patel. The Review Council, by written report dated March 18, 1993, then recommended that an inquiry be held under section 12 of the *Justices of the Peace Act*, to inquire into the question of whether Justice of the Peace Blackburn should be removed from office.

By Order in Council 2082/93 I was appointed to conduct the inquiry pursuant to section 12 of the *Justices of the Peace Act*. A copy of this Order in Council is appended hereto as Appendix 1.

Notice of this Inquiry was published both in the Toronto Star and the Globe and Mail on November 18, 1993. A copy of this notice is appended hereto as Appendix 2. On December 14, 1993 I convened a hearing to hear submissions from the media as to whether or not cameras would be allowed in the hearing room. It was my decision that they would not be allowed and a copy of that decision is appended hereto as Appendix 3.

On December 20, 1993 the Inquiry commenced. A Statement of Agreed Facts was submitted at that time. The Statement had been signed by Mr. Gavin MacKenzie, Commission Counsel and Justice of the Peace Blackburn. The two complainants had not signed the statement. However, I was informed by Commission Counsel that both Ms. Bubic and Ms. Patel had reviewed it, had no objection to its contents, and were content that it be introduced in that form. As a result of the filing of this Agreed Statement there was no viva voce evidence called. Appended to the Agreed Statement was a report from Dr. Zownir, Justice of the Peace Blackburn's physician. This report documented his ongoing physical condition. A copy of the Agreed Statement is appended hereto as Appendix 4.

Background of Justice of the Peace Blackburn

Justice of the Peace Blackburn was 64 years old at the time of the hearing. He had been married for 43 years and had five children. He came to Canada from Grenada in 1974, was employed by the Government of Ontario in the Ministries of Transportation and Revenue and was appointed a Justice of the Peace in 1980. Justice of the Peace Blackburn is designated by the Lieutenant Governor in Council as a presiding justice of the peace pursuant to section 4 of the *Justices of the Peace Act*, R.S.O. 1990, c.J.4. Such designation means that, in addition to other duties that justices of the peace are authorized to perform, he is authorized to preside at the trials of persons charged with offences under Ontario laws. After the complaints were made, Justice of the Peace Blackburn was assigned to office work which he has continued to this date.

The Inquiry

It is my understanding that this is the first inquiry held pursuant to section 12 of the *Justices of the Peace Act*. However, there are precedents for inquiries of a similar nature with regard to provincial judges.

Justice of the Peace Blackburn admitted the allegations through the filing of the Statement of Agreed Facts and thereby obviated the necessity of having the complainants testify. The issue for me therefore became whether the admitted behaviour was such as to justify a recommendation for removal from office.

Conduct of Justice of the Peace Blackburn

The allegations that Justice of the Peace Blackburn has admitted unquestionably constitute improper conduct. His comments were gross and disgusting and I find it difficult to understand what could have caused him to behave so badly. Making the situation even worse was the fact that one of the young women to whom he addressed his comments was a 16 year old high school student. The other individual was also a young woman – 21 years of age. The conduct occurred in the course of Justice of the Peace Blackburn's day to day duties. In the case of Ms. Patel she was a co-op student working in the courts in an attempt to discover if a career in law was in her future. What an example to set of our justice system. While Ms. Bubic was not as young as Ms. Patel nor was she still in high school, the situation was also very difficult for her. Given her age she must have been relatively new to the working world. She came into Justice of the Peace Blackburn's office as a professional and had every right to be treated as such. Instead she had to listen to disgusting comments that had nothing to do with the job to be done. This behaviour demeaned her.

Mr. Earl Levy, counsel for Justice of the Peace Blackburn submitted a medical report which was appended as part of the Statement of Agreed Facts. This report indicated that his client suffered from numerous medical problems. While the report certainly verified his medical condition it did not explain why he would engage in such bizarre behaviour. Perhaps, more relevant, it did not give me any basis for being satisfied that such behaviour would not recur.

Appended also to the Statement of Agreed Facts was a letter dated November 9, 1993 from Mr. Rick Warren, an employee counsellor with Management Board Secretariat of the Ontario Government. The letter stated that Justice of the Peace Blackburn had attended for counselling related to the complaints. Mr. Warren indicated that he felt Justice of the Peace Blackburn had benefited from his involvement with Employee Counselling. Character evidence was also contained in the Statement of Agreed Facts from Bishop Brown and Justice of the Peace Downes. Both indicated that they felt Justice of the Peace Blackburn's behaviour was out of character and would not be repeated. However, no one was able to give an explanation for the behaviour in the first place.

I am mindful that Justice of the Peace Blackburn admitted the allegations at the Justice of the Peace Review Council and apologized at that time to the complainants. He did the same before this Inquiry and therefore spared the complainants from having to testify. I commend him for this and for taking counselling on his own initiative.

Standards of Conduct

A number of authorities were cited to me regarding judicial standards of conduct. The authorities came both from prior judicial inquiries into judicial behaviour and from academic writings from various jurisdictions. They were most helpful.

The authorities presented to me all dealt with the standards of conduct for judges. I found nothing related to justices of the peace or those who hold similar positions in other jurisdictions. The question then remains whether justices of the peace should be held to the same standards of conduct as judges. However, when considering Justice of the Peace Blackburn's conduct I consider this issue to be irrelevant. What Justice of the Peace Blackburn said to these young women in the course of his and their professional duties would be wrong and totally unacceptable in any workplace. One need not worry about any special standards of judicial conduct – his conduct did not meet the bare minimum of what would be acceptable in any work environment in today's society.

The issue then becomes what is the appropriate remedy for such unacceptable behaviour. It is at this stage of the Inquiry that the question of whether justices of the peace should be held to the same standards of behaviour as judges becomes more relevant. As I indicated above, the literature dealing with this subject speaks only to judges and not to other judicial officers. Justices of the peace are judicial officers. The difference between the requirements for appointment of judges and justices of the peace is that justices of the peace are not required to have formal legal training nor are they required to have been members of a Bar prior to their appointment.

However, justices of the peace are very important judicial officers. Among other duties, they make decisions that affect a person's liberty such as bail, they determine whether process will issue, they decide whether or not to issue search warrants, and they preside in court. In fact, for many people their only contact with a judicial decision maker is with a justice of the peace. It is the justices of the peace who preside in court on matters such as parking tags, speeding tickets, by-law infractions, and provincial offences. These are the day to day type of "judicial" issues that confront most people. It is therefore quite probable that a great number of the public will form judgements of our justice system based on their experiences with a justice of the peace. Justice of the Peace Blackburn was a presiding justice of the peace which means that he carried out the full range of duties that could be assigned to a justice of the peace, including presiding in court.

In an article cited to me by Commission Counsel entitled, *'Judges on Trial - A Study of the Appointment and Accountability of the English Judiciary'*, by Shimon Shetreet, the author states at p. 282,

“Judges could not discharge their functions without complete public confidence. If a judge behaved in a way which seriously impaired public confidence in him, he would no longer be able to administer justice and therefore should leave the bench. The test of public confidence was expressly used in Canada by the Hon. I. C. Rand who was appointed a Commissioner to investigate the conduct of a judge. In a report recommending the removal of the judge the Commissioner proposed this test for determining unfitness in a judge. ‘Would the conduct fairly determined in the light of all circumstances lead [fairminded persons acting normally, expressing in fact enlightened public opinion] to attribute such a deficit of normal character that the discharge of the duties of the office thereafter would be suspect? Has it destroyed unquestioning confidence of uprightness, or moral integrity, of honesty in decision, the elements of public honour? If so then unfitness has been demonstrated.’ ”

The Honourable Mr. Justice Robins in his decision in the *Commission of Inquiry re: Provincial Judge Harry J. Williams* stated at p. 17 of the decision:

“The confidence of the public in the administration of justice is of paramount importance. That confidence is vital to our democratic system of government. And public confidence in the judiciary – in its integrity, its impartiality, its independence, its moral authority – is indispensable to the administration of justice. In the ultimate analysis the authority of our courts rests on public acceptance of judicial decisions – and that acceptance in turn depends on public confidence in our judges.

Every judge in his judicial and non-judicial activity has a responsibility to preserve and enhance public confidence in the administration of justice. He serves as an exemplar of justice, to much of the public its personification, and confidence in our system of justice in large measure depends on him. When he engages in misconduct, the magnitude of the misconduct may be measured by the extent to which he has impaired the confidence of the public in himself as a judge and in the administration of justice.”

And he continued at p. 19:

“But in deciding whether specific conduct constitutes misbehaviour requiring a judge’s removal from office under the terms of *The Provincial Courts Act*, it must be remembered that men and women who assume judicial office remain human – and ‘in a world of imperfect humans, the faults of human clay are always manifest’. There must be allowance for forgivable error; human frailties and fallibilities must not be forgotten; none of us can attain the ideal. To warrant removal misbehaviour should be more

than indiscretion or error in judgment. But whether in a given case misbehaviour for non-judicial activity justifies removal from office must normally depend on circumstances which cannot be covered fully by any statement of general principle. There are no tests of misbehaviour capable of exact definition. Nor are there standards of judicial conduct which admit of quantitative measurement. Each case must ultimately depend on the nature of the conduct, all the facts surrounding it, its effect on the judge's ability to perform his official duties, and the extent to which it has impaired public confidence in the judge and in the administration of justice. As in so many issues in law and ethics, it becomes a matter of degree, a question of where the line is to be drawn."

While these latter comments apply to non-judicial activities, in my view they have even greater relevance when one is concerned with judicial activities. I also have no difficulty in finding that these comments have application to the behaviour and conduct of justices of the peace just as they do to judges. Members of the public do not easily make distinctions between the various decision makers in the system.

Again I must emphasize that we are not here discussing behaviour or conduct that might perhaps be on the periphery of acceptable but behaviour that is clearly in any setting totally unacceptable. If the behaviour had been less serious then there might be an argument about whether justices of the peace should be held to exactly the same standards as judges in those circumstances.

When justices of the peace accept their appointments they can't help but appreciate that they are a part of the justice system and the public will have certain expectations of their behaviour while discharging their judicial duties.

Being mindful of the principles set out above regarding judicial conduct, it is my opinion that Justice of the Peace Blackburn by his behaviour to the complainants in this Inquiry has – and here I adopt the words of Madam Justice MacFarland in the Hryciuk decision – “displayed a lack of regard for the dignity and honour of his judicial position. His conduct must seriously diminish public respect and confidence in him and thereby severely impair his ability to function” as a justice of the peace.

I conclude that Justice of the Peace Blackburn's misconduct is such that it does not serve the best interests of the administration of justice in this province that he continue as a justice of the peace. Of particular significance to me in coming to this conclusion was the nature of the behaviour, the fact that it occurred in the course of his judicial duties and the age and circumstances of the young women to whom his behaviour was directed. I take this view despite the fact that he apologized, admitted the allegations thereby sparing the complainants from

testifying and attended gender equity training. None of these factors can excuse his behaviour, nor restore the necessary public respect and confidence in him.

Before concluding my reasons I wish to commend the complainants – Ms. Bubic and Ms. Patel. They are two courageous young women. Initiating a complaint such as this and following it through the process is not an easy task. I hope that their experiences have not caused them to lose faith in our justice system.

Conclusion

For the reasons given above I find that His Worship Justice of the Peace Blackburn has become incapacitated or disabled from the due execution of his office by reason of conduct that is incompatible with the execution of the duties of his office and I recommend that he be removed from that office.

Costs

With regard to the issue of costs, despite my recommendation that Justice of the Peace Blackburn be removed, I am prepared to recommend that he be compensated according to sec. 12(3)(b) of the *Justices of the Peace Act* “for all his costs in connection with the Inquiry.” It should be noted that there is no provision in the statute which ties a recommendation as to costs to the recommendation as to removal. I have made this recommendation because of Justice of the Peace Blackburn’s actions in apologizing, and admitting the allegations. As a result of this the proceedings were shortened considerably and the complainants spared from testifying. While I recognize that the reason for an inquiry being held at all was Justice of the Peace Blackburn’s behaviour it is my view that he deserves some acknowledgement for the manner in which he conducted himself following the incidents in question. In my view this can be accomplished through a recommendation that he be compensated for all his costs in connection with the Inquiry.

All of which is respectfully submitted.



COMMISSIONER

January 21, 1994

LIST OF APPENDICES

1. Order in Council (2082/93)
2. Notice of Public Hearing published on November 18, 1993 (in the Globe & Mail and the Toronto Star)
3. Ruling on Application to Televisе the Proceedings
4. Statement of Agreed Facts

Appendix 1

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit :

pursuant to subsection 12(1) of the Justices of the Peace Act, R.S.O. 1990, c. J.4, Her Honour Judge Mary Hogan, a Judge of the Ontario Court of Justice (Provincial Division), be appointed to inquire into the question of whether His Worship Leonard Blackburn, a Justice of the Peace, should be removed from office.

Recommended


 Attorney General

Concurred


 Minister of Cabinet

Approved and Ordered

AUG 19 1993

Date


 Lieutenant Governor

Appendix 2



**COMMISSION OF INQUIRY
INTO THE CONDUCT OF
HIS WORSHIP LEONARD BLACKBURN,
A JUSTICE OF THE PEACE**

NOTICE OF PUBLIC HEARING

Pursuant to subsection 12(1) of the *Justices of the Peace Act*, R.S.O. 1990, c. J4, The Honourable Judge Mary Hogan, a Judge of the Ontario Court of Justice (Provincial Division) has been appointed to inquire into the question whether His Worship Leonard Blackburn, a Justice of the Peace, should be removed from office.

The inquiry will consider:

1. The conduct of His Worship Leonard Blackburn in relation to Ms Malina Patel on October 14, 1992.
2. The conduct of His Worship Leonard Blackburn in relation to Ms Dana Bubic on October 20, 1992.

The public hearing will commence on Monday, December 20, 1993 at 10:00 a.m. at Hearing Room No.1, 21st Floor, 180 Dundas Street West, Toronto, and will continue daily at the same time and place until completed.

Any person who wishes to give evidence at the inquiry or who has information he or she believes will be of interest to the inquiry or who wishes to make a preliminary motion is requested to contact John I. Laskin, Commission Counsel, no later than Friday, December 17, 1993 at the address below.

Applications by the electronic media to televise or otherwise record all or part of the proceedings must be made to Commission Counsel at the address below by Monday, December 13, 1993.

John I. Laskin
Commission Counsel
Davies, Ward & Beck
Barristers and Solicitors
1 First Canadian Place
Suite 4400, P.O. Box 63
Toronto, Ontario
M5X 1B1
(416) 863-5561

The Honourable Judge Mary Hogan
Commissioner
Ontario Court of Justice
(Provincial Division)
Suite 2600
1 Queen Street East
Toronto, Ontario
M5C 2W5

Appendix 3

COMMISSION OF INQUIRY RE:

In the matter of:

*His Worship Justice of the Peace Leonard Blackburn
a Justice of the Peace*

*Before THE HONOURABLE JUDGE MARY L. HOGAN
Commissioner, held at 180 Dundas Street West,
Toronto, Ontario on Tuesday, the 14th day of December, 1993*

RULING ON APPLICATION TO TELEVISION THE PROCEEDINGS

Gavin MacKenzie, Esq.

Commission Counsel

Earl Levy, Q.C.

*Counsel for Justice of the
Peace Leonard Blackburn*

Daniel Henry, Esq.

Counsel for C.B.C.

On December 14, 1993 I heard submissions regarding the issue of televising the proceedings of the *Inquiry Into the Conduct of His Worship Leonard Blackburn, a Justice of the Peace*. The Inquiry itself is to commence December 20, 1993.

Mr. Dan Henry on behalf of the C.B.C. appeared and made submissions in favour of televising the proceedings. Mr. Earl Levy Q.C., counsel for Justice of the Peace Blackburn appeared and made submissions against televising the proceedings. Mr. Gavin MacKenzie, Commission Counsel called two witnesses, the complainants in this matter – Ms. Dana Bubic and Ms. Malina Patel. Both testified that they did not wish to have the proceedings televised. Mr. MacKenzie made submissions in support of that position.

I would like to thank counsel for their very thorough submissions which assisted me greatly.

After careful consideration, it is my decision that the proceedings of this Inquiry will not be permitted to be televised.

I recognize that it is most important that proceedings of this nature be open and that the public have access to them, whether through attending at the hearing itself or through media coverage. The hearing will be open to all—including all members of the press. The media will be able to report in whatever way they so wish. By not allowing cameras in the hearing room I am not preventing the television media from reporting the events – they will still be able to attend and report on the proceedings. The issue of “openness of proceedings” should not be confused with the issue of “televising the proceedings”. They are very different issues.

It was argued by Mr. MacKenzie that because this Inquiry is an inquiry into the conduct of a justice of the peace, called as a result of the complaints of two individuals and not a general inquiry established to examine issues of broad public policy, that I should be very cautious in deciding to allow it to be televised. He cited various precedents that, he submitted establish the principle that different tests may apply to broader policy inquiries than to inquiries where the conduct and future of an individual is directly at stake. I agree that there is a real and substantial difference between these two types of inquiries. I note that there is precedent however, for televising even those inquiries that involve an individual’s conduct, the most recent example being the *Hryciuk Inquiry*. In that case, however, it is important to note that television coverage was not opposed. Madam Justice MacFarland clearly stated in her reasons on the media ruling, that, had there been opposition to the coverage, then her decision might have been different. I was referred by Mr. MacKenzie to Re: Inquiry Pursuant to S. 13 (2) of the *Territorial Court Act*, [1990] N.W.T.R. 181, at p. 188 wherein Madam Justice Conrad stated,

“In view of the dangers inherent in editing and transmitting only the dramatic or exciting evidence involving allegations of misconduct, I am concerned that selective emphasis may have a serious and negative impact on these proceedings.”

I agree with these comments. Therefore, in my opinion I must be particularly cautious in deciding to allow televised proceedings in the present type of inquiry. I am not however, refusing television coverage on this ground alone.

A much more important factor in my decision is the fact that both complainants are opposed to television coverage. This, in and of itself, is not determinative. However, when one also considers that the complainants are of a relatively young age and that the evidence may be such as to cause some embarrassment to them when testifying it becomes more significant.

The fact that the Justice of the Peace was opposed to the televising of these proceedings was noted, but was not determinative in any way of my decision. I heard no evidence from Justice of the Peace Blackburn of the nature of his opposition. Precedents were cited to me by his counsel where concerns were raised about the adverse effect of televised proceedings on the ability of judicial officers to remain as such, if absolved of any wrongdoing. However, I feel the principle of full disclosure of information overrides any such concerns and I am not convinced that if the proceedings were televised it would prevent him from continuing to fulfil his duties as a justice of the peace should the Inquiry result in his favour.

The fact that the complaints involve, and I am quoting here from the summary that was distributed, “allegations of inappropriate comments of a sexual nature to young women whom he met in his office at the College Park Courthouse” is also significant. In my view, in cases such as these it is particularly important that the public have full information concerning the conduct of a judicial officer. Madam Justice MacFarland stated at page 3 of her reasons in the *Hryciuk Inquiry* media ruling;

“It is important, I think, for the public to know and be aware that there is a system in place to deal with complaints that are made against one of our judges and to observe how that system works. It is important that they see the process that is carried out in order that they satisfy themselves that there has been a hearing, that it has been conducted impartially and that it has been fair to all those involved. It is only by open and public hearings that the public will have confidence in the institution.”

I agree with these statements, but, in my view, this must be balanced by the importance of providing an atmosphere in the hearing itself that will not deter those with pertinent information from coming forward and testifying. If the environment

itself becomes so intimidating as to make the alleged victims feel that they are on trial themselves then all the advantages of an “open system” are lost. The added result might also be to discourage individuals from making complaints when they would otherwise do so.

Finally, Mr. Henry, counsel for the C.B.C., argued what he characterized as a “jurisdictional issue”. He submitted that by virtue of section 4 of the *Public Inquiries Act* I had only two choices – to either ban the press or to allow full media coverage including cameras in the hearing room. I am not persuaded by his submissions. Section 4 of the *Public Inquiries Act* speaks to the inquiry being open, not to the procedures to be established for media coverage. In my view there is ample authority in section 3 of the *Public Inquiries Act* to allow me to regulate media coverage. Section 3 states as follows;

“Subject to sections 4 and 5, the conduct of and the procedure to be followed on an inquiry is under the control and direction of the commission conducting the inquiry.”

As I indicated above, Mr. Henry would have me find this to be a “jurisdictional issue”. In my view, it is in no way a matter of jurisdiction.

For all of the reasons set out above, I am, as I indicated, refusing to allow the proceedings of this Inquiry to be televised.

This ruling does not, however, preclude the C.B.C. should they decide that they wish to do so, from filming the actual hearing room prior to the commencement of the proceedings on December 20, 1993.

While submissions were not made on behalf of any other electronic media except C.B.C., I am aware that letters were received from both Global and City T.V. asking to televise the proceedings. I am asking Commission Counsel upon receipt of my decision to forward copies of same to these stations. Should they also wish to televise the hearing room prior to the proceedings on December 20 they may do so.

Thursday, December 16, 1993

Appendix 4

COMMISSION OF INQUIRY INTO THE CONDUCT OF HIS WORSHIP LEONARD BLACKBURN, A JUSTICE OF THE PEACE

STATEMENT OF AGREED FACTS

I. APPOINTMENT OF COMMISSION OF INQUIRY

By Order in Council dated August 19, 1993, Her Honour Judge Mary Hogan, a Judge of the Ontario Court of Justice (Provincial Division), was appointed pursuant to section 12 of the Justices of the Peace Act, R.S.O. 1990, c.J.4, to inquire into the question of whether His Worship Leonard Blackburn, a Justice of the Peace, should be removed from office.

The Commission of Inquiry was appointed on the recommendation of the Justices of the Peace Review Council upon the completion of an investigation into complaints of Malina Patel and Dana Bubic.

II. BACKGROUND INFORMATION CONCERNING JUSTICE OF THE PEACE BLACKBURN

Justice of the Peace Blackburn is 64 years old. He was born on January 1, 1929. He has been married for 43 years, and has five children ranging from 21 to 44 years of age. Three of his children and one grandchild live with Justice of the Peace Blackburn and his wife. He and one of his children are the only members of the household who are employed outside the home. Justice of the Peace Blackburn was suffering from financial difficulties at the time of the incidents described below.

Justice of the Peace Blackburn came to Canada from Grenada in 1974. He was employed by the Government of Ontario in the Ministries of Transportation and Revenue until he was appointed a justice of the peace in 1980.

Justice of the Peace Blackburn has been designated by the Lieutenant Governor in Council as a presiding justice of the peace pursuant to section 4 of the *Justices of the Peace Act*, R.S.O. 1990, c.J.4. In his capacity he is authorized to preside at the trials of persons charged with offences under Ontario laws, among other duties that justices of the peace are authorized to perform.

After the above complaints were made, Justice of the Peace Blackburn was assigned to office work which he has continued to this date. That work included such matters as: signing failing to respond resulting in convictions being registered by him together with the imposition of fines and costs; signing suspensions of drivers' licences for failure to pay fines; and signing plate denial orders.

Justice of the Peace Blackburn suffers from hypertension and is diabetic. His medical condition is described more fully in a report dated February 23, 1993 from Dr. Jerry Zownir, a copy of which is attached as exhibit 'A' to this Statement of Agreed Facts.

III. COMPLAINT OF MALINA PATEL

Malina Patel is 18 years old. She was born on November 25, 1975. She is a secondary school student who is currently taking her O.A.C. classes leading to university entrance.

On October 14, 1992 Ms. Patel was 16 years old, and in grade 12. She was enrolled in the school's co-operative educational program, in which students are given the opportunity to work in a field that interests them. Because Ms. Patel is interested in the possibility of pursuing a career in law, she chose to take her co-operative education placement at the College Park criminal courts at 444 Yonge Street in Toronto.

At approximately 11:00 a.m. on October 14, 1992 Ms. Patel entered Justice of the Peace Blackburn's office at the College Park Courthouse to ask him some questions pertaining to certain judicial functions. He gave her the answers that she required and then proceeded to ask her questions about her aspirations for the future. Following this brief discussion Justice Blackburn made comments to the following effect:

- "You're very pretty . . . you've brightened up my day.";
- ". . . this is the best day I've had in a long time thanks to you";
- "I don't want to go on my morning break because I don't want to lose any time when we could be talking together".

Justice of the Peace Blackburn asked Ms. Patel whether or not she had a boyfriend to which she replied "yes". He then told her about another young female co-op student with whom he worked previously. He told her how he and this student began to talk and get "friendly". He then told Ms. Patel that this student was:

- 15 or 16 years old;
- that she was an extremely beautiful girl;
- that she used to stare at him from the same place everyday;
- that she approached him and told him that she liked him;
- that they became "friends";
- that he saw this student for about six years until she was about 22 years of age;
- that he told this student that he couldn't marry her;
- that she should get married; and
- that "if she wants to see me she can. She can get some of what she [the other student] was accustomed to".

Justice of the Peace Blackburn said words to Malina Patel to the following effect:

- “You have a great body. How do you keep it up?”

Following the mention by Ms. Patel of a woman who had been calling the administrative office from Metfors, Justice of the Peace Blackburn mentioned a 22 year old woman who was in prison and said that he had looked through the cell window and saw this woman “stark naked”. Then he commented on how beautiful her body was and said that she was dancing around saying words to the following effect: “I want to fuck. I want to fuck. I want to fuck.”

Justice of the Peace Blackburn also asked Ms. Patel whether or not she had gone to court yet. She replied by telling him that she had gone on Tuesday, October 13, 1992. He then proceeded to tell her that he once had an interesting careless driving charge before him in court. He told her the story of a man who was pulled over by the police because he was weaving through traffic. When the police officer approached the man’s car, he noticed that there was a woman lying down on the floor of the car and that the man’s pant zipper was undone. Justice of the Peace Blackburn also mentioned to Ms. Patel that there was a “wet spot” on the man’s pants in the pelvic area. He then told Ms. Patel that the accused testified in court that he had dropped a lit cigarette on the floor and had asked the woman to look for it. When asked about the “wet spot” in his pelvic area, the accused said that he had stopped off at a restaurant just prior to being pulled over where he had a “little accident”. Justice of the Peace Blackburn went on to tell Ms. Patel that he did not believe the man’s story and then said words to the following effect: “Obviously the girl was giving him a blow job”.

Justice of the Peace Blackburn provided Ms. Patel with his business card with two phone numbers on it. One of the phone numbers was a direct line to him at Old City Hall (327-5179) and the other was his direct line at College Park (965-0129). He said that she could call him any time to talk.

Justice of the Peace Blackburn asked Ms. Patel what time she had lunch to which she responded “1:00 p.m.” He then told her that his secretary takes lunch at 1:00 p.m. as well and locks the door so that he’s by himself in his office. Justice Blackburn then asked her to have lunch with him. When Ms. Patel indicated that she’d let him know whether or not she could have lunch with him, he asked to see her hands. Ms. Patel showed him her hands with her palms up and he said “you have very nice hands”. Following this Ms. Patel thanked him and left his office.

Ms. Patel returned to his office and told him that she had to spend lunch with another co-op student and he asked her to promise that she would come back sometime in the afternoon. She did in fact make this promise but did not return to his office.

During Ms. Patel's conversation with Justice of the Peace Blackburn they were interrupted four times: first, by two police officers, one male and one female who wanted an information signed; second, by a gentleman who came in to sign as a surety; third, by a lawyer who wanted some subpoenas signed; and fourth, by a police officer for a forgotten reason.

IV. COMPLAINT OF DANA BUBIC

On October 20, 1992, Dana Bubic was 21 years old. She was employed as a retail investigator by Loss Prevention Services Limited. She is licenced as a private investigator and is interested in pursuing a career in law enforcement.

On October 20, 1992, Ms. Bubic attended at College Park Court, 444 Yonge Street, Toronto, Ontario at approximately 12:00 noon to lay two charges for theft under \$1,000 pursuant to the Criminal Code.

At approximately 12:20 p.m. Ms. Bubic entered the office of Justice of the Peace Blackburn, whom she had not met previously. The door to his office remained open.

Shortly after Ms. Bubic's arrival in Justice of the Peace Blackburn's office he asked if she was Yugoslavian. She replied: "yes". Following this reply by Ms. Bubic Justice of the Peace Blackburn said words to the following effect: "Yugoslavian women are passionate lovers".

Justice of the Peace Blackburn told Ms. Bubic that he was seeing a Yugoslavian lady and said words to the following effect:

- "In some countries a lot of hair is attractive";
- "Do you know how unattractive it is when a women has no hair down there?" (while pointing down between his legs);
- "Her hair down there is not white, but a pinkish colour. Can you believe that? What colour is yours?";
- "She (referring to the Yugoslavian lady he was seeing) is married, but they have a loveless marriage, that is why I am there. Her husband can't perform in bed, but she is still with him. Terrible thing."

Following this discussion, Ms. Bubic left Justice of the Peace Blackburn's office for a moment and then returned to sign the papers required for laying the charges. After he signed the information he asked Ms. Bubic to put her right hand on the Bible and swear that the information that she gave was the truth. When she put her hand on the Bible, he started to rub it. As he rubbed it she said "don't" and pulled her hand back.

When Ms. Bubic got up to leave Justice Blackburn's office, he asked: "When will I see you again?" and then said "I bet it is black and silky down there". Ms. Bubic did not respond to either question or comment and left his office.

V. JUSTICE OF THE PEACE BLACKBURN'S APOLOGY

Ms. Patel and Ms. Bubic both made complaints to the Justices of the Peace Review Council as a result of the incidents described above. During the investigation by the Council, Justice of the Peace Blackburn made the following apology to Ms. Patel and Ms. Bubic, who were present before the Council in person at the time:

"I have read and understand your allegations against me made by Ms. Patel and Ms. Bubic. I do not dispute them and wish to apologize to both ladies for my objectionable conduct.

I understand that my behaviour was upsetting to both Ms. Patel and Ms. Bubic. This was not my intention nor was any personal insult intended. It is difficult for me to understand why I acted so foolishly on these two occasions during one week in my whole life. However, even at my age there are lessons to be learned and I have learned from what I have done.

I assure you and the members of the Council that there will be no repetition of this conduct and I hope you both can forgive me. That's my formal apology."

VI. REACTION ON COMPLAINANTS

Ms. Bubic informed the Justice of the Peace Review Council that "I went into that office as a professional to deal with another professional and what I heard was extremely upsetting to me. When I left, I was very insulted." Ms. Patel told the Justices of the Peace Review Council that "I took co-op from school because I wanted to learn about the profession . . . I came to [Justice of the Peace Blackburn] and asked [him] questions because I wanted to learn."

VII. JUSTICE OF THE PEACE BLACKBURN'S SEXUAL HARASSMENT COURSE

Attached as Exhibit "B" to this Statement of Agreed Facts is a letter dated November 9, 1993 from Mr. Rick Warren concerning Justice of the Peace Blackburn's attendance at a sexual harassment course offered by the Ontario Government, Employee Health & Safety Services Branch.

VIII. CHARACTER EVIDENCE

Bishop Arthur George Brown was elected a Bishop in 1981. He was a lay member of the Judicial Council for eight years. He is a member of the Ontario Council on Multiculturalism and is associated with Cardinal Carter on public relations between the Caribbean Islands and Toronto.

The Bishop has known Justice of the Peace Blackburn for 18 years. Mr. Blackburn has been very active in his parish and is on its Advisory Council. He has seen the Justice of the Peace interact with other persons and has never heard anything derogatory about him. He has visited the Justice of the Peace a number of times at his home. The Bishop's three daughters are friends of the Blackburn family. His youngest single daughter has a house that backs on to the Blackburn's home and they have had a lot of contact with each other.

Bishop Brown knows that Justice of the Peace Blackburn was held in high esteem in Grenada. He knows that the Justice has very good manners and is a real gentleman. The Bishop is bewildered by the allegations against Justice of the Peace Blackburn – they are out of character in his view.

Bishop Brown feels that Justice of the Peace Blackburn would live up to his promise not to repeat his objectionable behaviour.

Charles Arthur Downes has been a Justice of the Peace since 1978. He has known Justice of the Peace Blackburn since the latter joined his church shortly after coming to Canada. The Justices of the Peace provide services to members of the congregation with respect to signing various documents. Justice of the Peace Blackburn is also involved in the administrative end of the church.

He has seen Justice of the Peace Blackburn interact with other people including females and has never seen him act in a crude or obscene manner and has not heard anybody else talk about Justice of the Peace Blackburn that way. Justice of the Peace Blackburn's actions with respect to Ms. Patel and Ms. Bubic were out of character in Justice of the Peace Downes' view. Justice of the Peace Downes feels that Justice of the Peace Blackburn's word is his bond and that he would live up to his promise not to repeat his objectionable behaviour.

IX. ACKNOWLEDGEMENT

Justice of the Peace Blackburn acknowledges that before signing this Statement of Agreed Facts he reviewed it carefully and obtained the advice of his counsel, Earl Levy, Q.C.

DATED at Toronto this 17th day of December, 1993.



Gavin MacKenzie
Commission of Inquiry Counsel
Davies, Ward & Beck
44th Floor
1 First Canadian Place
Toronto, Ontario M5X 1B1



Justice of the Peace
Leonard Blackburn

Exhibit "A"

JERRY R. ZOWNIR, B.Sc., M.D., F.R.C.P. (C)
INTERNAL MEDICINE

COMMERCIAL COURT, MEDICAL CENTRE
COMMERCIAL COURT EAST BOX 37
TORONTO ONTARIO M5L 1A1
PHONE (416) 864-0070

February 23, 1993

Mr. Earl J. Levy, Q.C.,
Barrister,
250 Yonge St.,
P. O. Box 24, Suite 2600,
Toronto, Ontario,
M5B 2M6

RE: Leonard Blackburn

Dear Mr. Levy:

I am responding to your request regarding a medical report on behalf of the above named person, whom I first saw in medical consultation, at the request of Dr. Vince Colapinto (deceased), Department of Urology at St. Michael's Hospital.

He was assessed in the Medical Consultation Clinic at St. Michael's Hospital on April 6th, 1982. At that time, he was a 53-year-old gentleman who was born in Granada and was practising as a Provincial Court Judge. He was referred for assessment of hypertension which had onset some fifteen years earlier.

In that fifteen year interval, he was treated intermittently with antihypertensive therapy. Subsequently, shortly prior to his initial assessment in 1982, he was found to be significantly hypertensive and was instituted on antihypertensive therapy in the order of Inderal 40 mgs. b.i.d., Hydralazine 25 mgs. q.i.d. and a diuretic tablet.

His blood pressure was difficult to control. At the time as well, he was suffering from a degree of impotency, with inability to get and sustain an erection and had experienced difficulty with ejaculation for some two years prior.

In 1982, he underwent an internal urethrostomy for a urethral stricture, by Dr. Vince Colapinto. There was no other relevant past history other than the urethral stricture and hypertension at the time.

Exhibit "A"

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RE: Leonard Blackburn

In 1982, he weighed approximately 109 kilograms, at which time he was initiated on a weight reduction program. In 1983, despite weight reduction, Mr. Blackburn developed type II diabetes mellitus which required more stringent dietary measures as well as oral hypoglycemic agents. This undoubted further augmented his impotency. He did have an episode of left epididymitis with orchitis, for which he was admitted to hospital under the care of Dr. J.L.T. Russell in June 1986. He was treated with I.V. antibiotics at that time.

He has had several urethral dilations in the ensuing years and subsequent to both Dr. Vince Colapinto and Dr. Russell's death, his urological problems fell into the hands of Dr. Norman Struthers who became Chief of Urology at St. Michael's Hospital and still sees Judge Blackburn on a regular basis.

In light of his impotency, he was prescribed injections of local Papaverine and was taught to practise self-injections.

In April 1988, he required recurrent urethral dilation which was again repeated in July 1989.

In light of the recurrent nature of his urethral stricture requiring repeat dilations, Dr. Struthers referred Judge Blackburn to Dr. C.F. Ackman in Montreal, who after assessment, implanted a permanent urethral stent in the centre of the skin graft, on April 5th, 1990. He had subsequent urethrograms which showed patency of the implanted stent and it was not for approximately a year and a half to two years later, that he developed recurrent symptoms requiring further dilation by Dr. Struthers.

It is noteworthy to mention that through the ensuing years, Mr. Blackburn has had significant hypertension requiring multiple medical management, many of these medications having unfortunately the side effects of generating sexual dysfunction, with diminished libido as well as impotence. As well, I believe there is a significant degree of his sexual dysfunction based on his intrinsic diabetic disease which further augments this problem.

More recently in January 1993, Judge Blackburn underwent a Persantine Cardiolite scan of his heart and this showed a study compatible with coronary artery disease.

For the past two years, Judge Blackburn has been maintained on high dose of oral hypoglycemic agents to control his type II diabetes, as well as a number of antihypertensive agents in maximal dose. His hypertension is moderately severe and

Exhibit "A"

Page 3.....

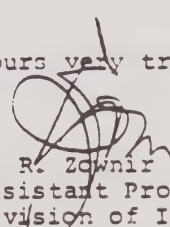
RE: Leonard Blackburn

difficult to control and requires a number of agents including Inderal and Zaroxolyn, as well as Catapres, which all contribute to diminished libido.

In summary therefore, this 64-year-old gentleman has suffered from long-standing moderately severe hypertension requiring numerous medications to control, type II diabetes mellitus with maximum oral hypoglycemic agents for control and has suffered from recurrent urethral strictures and impotency for some time, the latter being related to his multiple medical therapy as well as his underlying diabetes mellitus. Incidentally, I have always recognized Judge Blackburn as an individual of highest integrity, honesty and sincerity during the time that I have been his attending physician, over the past ten plus years.

I trust this is the information you require.

Yours very truly,



J. R. Zownir M.D., F.R.C.P.(C)
Assistant Professor of Medicine
Division of Internal Medicine,
St. Michael's Hospital,
University of Toronto

JRZ/pw

Exhibit "B"



Employee Health & Safety Services Branch
Employee Counselling Services
5th Floor, 880 Bay Street
Toronto, Ontario
M7A 1N3

Management Secrétariat
Board du Conseil
Secretariat de gestion

Telephone: 327-1106
Fax: 327-1115

November 9, 1993

Mr. Earl Levy
Barrister & Solicitor
Suite 2600
P.O. Box 24
Toronto, Ontario
M5B 2M6

RE: Mr. Leonard Blackburn

Dear Mr. Levy:

Mr. Blackburn was seen in my office on four occasions. Mr. Blackburn initiated the contact with Employee Counselling Services on April 13, 1993 to obtain counselling related to his harassment case.

During the sessions Mr. Blackburn dealt with the circumstance surrounding the two incidents which precipitated the harassment complaint. We jointly examined the issues which can lead to a harassment complaint and also discussed the care which must be taken in personal interactions. We also discussed the issue of power how it is used, how it can be abused by some persons.

Mr. Blackburn appeared very concerned about the harassment complaint and the impact both on himself and his family. Mr. Blackburn did not appear to minimize the complaint and seemed to have gained an increased awareness of the whole issue of harassment in the workplace. It appeared that Mr. Blackburn benefited from his involvement with Employee Counselling.

If you require additional information please contact me.

Sincerely,

Rick Warren
Employee Counsellor

cc: Mr. L. Blackburn

